IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.22325 of 2021
and
W.M.P.No.23559 of 2021

M/s.Prematrix Software Solution Pvt Ltd,
Rep by its Director C.Muruganandham
No.51 Step Colony,
Dhargha,
Hosur – 635 125. ... Petitioner

Vs.

1.Union of India,
Rep by Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110 001.

2.The Central Board of Indirect Taxes and Customs,
Department of Revenue,
Rep by its Chairman,
Ministry of Finance, Government of India,
North Block, New Delhi.

3.The Deputy Commissioner,
Member, Designated Committee,
Under Sabka Vishwas (Legacy Dispute Resolution) Scheme,
GST Bhawan,
No.1, Foulke's Compound,
Anaimedu, Salem.

4.The Commissioner of Goods and Service Tax
and Central Excise,
GST Bhawan,
No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

5.The Assistant Commissioner-GST & Central Excise,
Hosur I Division,
Thally Road,
Hosur – 635 109.

6.The Superintendent of GST & Central Tax,
Mookandapalli Range,
Hosur. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned communication notice DIN.202110959 x P0000555 BA4 dated 27.09.2021 issued by the 6th respondent, quash the same as illegal and consequently direct the respondents to accept the payment of Rs.11,17,425/- as per SVLDRS Form-3 in compliance under Section 127 of the Finance (No.2) Act, 2019 towards full and final settlement of tax dues and to issue a certificate of settlement in SVLDRS Form-4.

For Petitioner : Mr.S.Rajesh

For Respondents : Mr.M.Santharaman
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has prayed for quashing the Impugned Communication/Notice dated 27.09.2021 issued by the Superintendent of GST & Central Tax and quash the same and consequently to direct the respondents to accept the payment of Rs.11,17,425/- as per SVLDRS Form-3 in compliance under Section 127 of the Finance Act No.2/2019 towards full and final settlement of tax dues and for issuance of Settlement Certificate in SVLDRS Form-4.

2. The petitioner had suffered an adverse order in Order-in-Original No.05/2019 dated 31.03.2019.

3. By the aforesaid order, the demand proposed in Demand-cum-Show Cause Notice No.73/2018-19 (ST) dated 22.10.2018 was confirmed. Operative Portion of the aforesaid order reads as under:-

> i. I confirm that the total consideration of Rs.2,25,90,000/- (Rupees Two Crores Twenty Five Lakh and Ninety Thousand only) received towards providing taxable services should be considered as taxable value for computing Service Tax liability;
>
> ii. I confirm the demand of the total service tax (including Education Cess and Secondary Education

Cess) of Rs.27,93,563/- (Service Tax:Rs.27,12,197/- + Education Cess:Rs.54,244/- + SHE. Cess:Rs.27,122/-) (Rupees Twenty Seven Lakh Ninety Three Thousand Five Hundred and Sixty Three only) on consideration received towards providing taxable service for the period from 01.04.2013 to 31.03.2015 in terms of proviso to Section 73(1) and Section 73A of the Finance Act, 1994.

iii. I confirm the demand of Interest under Section 75 of the Finance Act, 1994 at applicable rates on the amount demanded in point (ii) above;

iv. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(1)(a) for failure to register with the department as required under the Service Tax Rules;

v. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(2) of the Finance Act, 1994, for failure to assess the Service Tax payable and file ST-3 Returns within stipulated time, as required under the Service Tax Rules; and

vi. I impose a penalty of Rs.27,93,563/- (Rupees Twenty Seven Lakh Ninety Three Thousand Five Hundred and Sixty Three only) under Section 78 of the Finance Act, 1994, for engaging in fraud, willfully suppressing the facts and contravening the provisions of Finance Act, 1994 and Service Tax Rules, 1994, within an intention to evade payment of Service Tax. However, under the second proviso to Section 78(1) this penalty shall be 25% of the Service tax determined, provided the Service Tax determined, appropriate interest and reduced penalty are paid within a period of 30 days from the date of receipt of this Order.

4. The petitioner opted to settle the dispute in terms of Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 under the Finance Act No.02/2019 by filing a declaration in SVLDRS Form-1 on 25.12.2019.

5. The petitioner was thereafter issued with an acknowledgment in SVLDRS Form-2/2A followed by SVLDRS Form-3 on 28.02.2020.

6. As per the SVLDRS Form-3 dated 28.02.2020, the petitioner was required to pay a sum of Rs.11,17,425/-. This amount was to be paid latest by 30.06.2020. This time was further extended by two years on account of Covid-19 pandemic in the light of several orders of the Hon'ble Supreme Court, whereby, limitations were extended wherever deadlines had expired. In fact, the Central Government had also issued an Ordinance called the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 which was later replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. The limitation would have stood extended from time to time that is up to September 2022.

7. The only reason forthcoming in the affidavit is that the petitioner could not pay the amount in time despite extended period on account of financial difficulties/crisis.

8. The learned Senior Standing Counsel for the respondents had submitted that the scheme has to be construed strictly and there is no scope of diluting the same and since the petitioner had failed to pay the amount within time stipulated as per communication dated 09.06.2020, the benefit of the amnesty under the SVLDRS Scheme cannot be extended to the petitioner.

9. By way of rejoinder, the learned counsel for the petitioner has placed a decision of this Court in W.P.No.24366 of 2021 dated 19.10.2023, wherein, under the similar circumstances, this Court had interfered and extended the benefit of SVLDRS Scheme to the petitioner therein.

10. Heard the learned Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

11. The dispute in the present Writ Petition is as to whether the petitioner was entitled to settle the dispute under Sabkha Vishwas (Legacy Dispute Resolution) Scheme, (SVLDRS), 2019 vide Finance Act No.2/2019.

12. The petitioner had also accepted and quantified the tax at Rs.11,17,425/-. The petitioner however failed to pay the amount as per the scheme under the said Scheme and the Rules made therein and as per extension granted by the Department vide Notification No.1/2020 dated 14.05.2020 bearing reference F.No.267/50-2020-CX8 latest by 30.06.2020. This was also communicated to the petitioner by the Commissionerate vide its communication dated 09.06.2020.

13. However, fact remains that this was during the peak period when the entire country was under lock down due to out break of Covid-19 pandemic. The difficulties for the industry continued even after

Covid-19 receded as there were large scale disruption of both economic and social activity. Thus, failure of the petitioner to not pay the amount in time can be excused.

14. This Court has come to the rescue of persons similar like the petitioner repeatedly by passing several orders by extending the period for depositing the amount quantified in Form-3 wherever the benefit of SVLDRS Scheme 2019 was availed by a defaulting assessee. The Court has directed such declarant petitioner to pay the interest on the delayed payments.

15. By an order dated 21.06.2021 in W.P.No.14454 of 2020, the Court had directed the petitioner therein to remit the amount under the Scheme along with interest at 15% from the due date till the date of payment. Since the benefit of Scheme is intended to benefit the assessee like the petitioner, denial of the benefit would be arbitrary, though the respondent cannot blamed and cannot unilaterally extend the period of limitation in the light of restriction the extension of time vide Notification No.1/2020-Central Excise (N.T.) dated 14th May, 2020.

16. Be that as it may, Court is of the view that the petitioner can be allowed to settle the dispute under the aforesaid Scheme subject to payment of interest. Under these circumstances, the petitioner is directed to pay the amount together with interest calculated at 15% as ordered in W.P.No.24366 of 2021 vide order dated 19.10.2023, within a period of 30 days from the date of receipt of a copy of this order. The interest should be paid from the date of quantification upto the date of payment. Subject to payment of the aforesaid amount, the petitioner shall be deemed to have been settled under the Scheme. The respondents are directed to issue necessary discharge certificate to the petitioner, if the petitioner complies with the above directions.

17. This Writ Petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

25.10.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
arb/nst/kkd/jas

To

1.Union of India,
Rep by Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110 001.

2.The Central Board of Indirect Taxes and Customs,
Department of Revenue,
Rep by its Chairman,
Ministry of Finance, Government of India,
North Block, New Delhi.

3.The Deputy Commissioner,
Member, Designated Committee,
Under Sabka Vishwas (Legacy Dispute Resolution) Scheme,
GST Bhawan,
No.1, Foulke's Compound,
Anaimedu, Salem.

4.The Commissioner of Goods and Service Tax
and Central Excise,
GST Bhawan,
No.1, Foulkes Compound,
Anaimedu, Salem – 636 001.

5.The Assistant Commissioner-GST & Central Excise,
Hosur I Division,
Thally Road,
Hosur – 635 109.

6.The Superintendent of GST & Central Tax,
Mookandapalli Range,
Hosur.

C.SARAVANAN, J.

jas

W.P.No.22325 of 2021
and
W.M.P.No.23559 of 2021

25.10.2024